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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CHERYL MORRIS, Plaintiff and Appellant, v. CITY OF LOS ANGELES, Defendant and Appellant.	B278231 (Los Angeles County Super. Ct. No. BC552974)

APPEAL from an order of the Superior Court of Los Angeles County, Michael L. Stern, Judge. Reversed.

Castillo Harper, Brandi L. Harper, Joseph N. Bolander, and Michael Morguess for Plaintiff and Appellant.

Michael N. Feuer, City Attorney, Janna B. Sidley, General Counsel, Christopher B. Bobo, Assistant City Attorney; Gordon & Rees, Joshua B. Wagner, and Matthew G. Kleiner for Defendant and Appellant.

Cheryl Morris appeals from the trial court's judgment notwithstanding the verdict (JNOV) on her employment discrimination claim against the City of Los Angeles (the City). The trial court concluded that Morris had failed to present substantial evidence supporting the jury's finding that the City denied Morris a promotion because of her gender, rather than, as the City contends, because of her comparatively low ratings in the application process. Morris points to evidence reflecting a disparity in the way the City rated Morris as an applicant and the way it rated the successful male applicants, arguing such disparity reveals the ratings to be pretextual. Morris contends that this evidence of pretext, particularly when combined with other evidence suggesting a gender bias on the part of one of the reviewers, constitutes sufficient evidence of intentional discrimination to support the jury's verdict.

Although a different reasonable jury might well have found for the defendant on the evidence presented, under the applicable standard of review we reverse the court's grant of the JNOV. Drawing all reasonable inferences from the evidence in Morris's favor and considering the record as a whole, as we must, we find substantial evidence supports the jury's verdict.

FACTUAL AND PROCEDURAL BACKGROUD

I. Morris's Application for Promotion to Sergeant and the Application Process

Cheryl Morris has been a sworn peace officer since 1994, and a police officer with the Los Angeles Port Police (Port Police) since 1998. In 2011, she applied for a promotion from Police Officer III to Police Sergeant. In considering Morris and 28 other candidates who applied for this promotion, the City followed a pre-determined multi-step application process. The first phase of the City's application process involved a multiple choice test,

essay, and interview with City personnel and two law enforcement officers from outside the Port Police. Following this first phase of the process, Morris was among 13 candidates selected for further consideration. Only two of the officers on this list, including Morris, were female.

In the second and final phase of the application process, two Port Police captains—Captain Ralph Tracy and Captain Alberto Rosario—interviewed each of the candidates, and considered a writing sample from each as well. The writing sample responded to a prompt asking each candidate to explain the steps a sergeant should take in a hypothetical scenario involving a citizen complaint against an officer. In interviewing candidates, Rosario and Tracy used questions from a pool of questions designed to "gauge the applicant's knowledge" in several areas. Rosario and Tracy each gave the candidates ratings on a scale of "1" to "5"—a "1" reflecting an "unsatisfactory" rating and a "5" reflecting a "superior" rating—in each of the following categories: experience, leadership, field operations, community relations, discipline, writing sample, and overall. Each captain recorded these ratings on a review form, which included a space for comments, in addition to the numerical ratings. Rosario testified that he and Tracy wrote comments only when a candidate's answer was "exceptionally bad or exceptionally good." The City calculated an averaged rating for each candidate based on the scores from each captain, and ranked the candidates on this basis.

Morris and the other female candidate received, respectively, the second to lowest and lowest averaged ratings in this final phase of the application process. After various City departments reviewed the rating sheets and application packets—including for Equal Opportunity compliance—the City

promoted the five highest-rating candidates, all of whom were male: Then Officers Niles, Belo, Nua, Oliver, and Braun.

II. Morris's Discrimination Lawsuit Against the City

Morris sued the City and the Chief of the Port Police, Ronald J. Boyd, alleging the City discriminated against her based on her gender when it declined to promote her to sergeant in 2011. She asserted four causes of action, all but one of which was summarily adjudicated and dismissed by the court on a defense motion. The parties ultimately went to trial on the one remaining cause of action alleging gender discrimination.

III. Evidence Presented at Trial

The trial spanned four days and involved the testimony of 12 witnesses and numerous exhibits. Below we outline the evidence most germane to the issues the parties raise on appeal.

A. *Evidence Regarding Nondiscriminatory Basis for Promotion Decision*

At trial, the City argued and presented evidence that it chose not to promote Morris to sergeant in 2011 because Morris's ratings in the final step of the candidate selection process were lower than the ratings of the male officers ultimately promoted. For example, Morris's ratings in five of the eight categories were lower than those the successful candidates had received in the same categories. In the remaining three categories (experience, leadership, and community relations), Morris's ratings were the same or lower than those of all successful candidates. The total average ratings of the candidates selected were each 10 to 12 points higher than Morris's total average rating, ranging from 35.5 to 37.5 out of a possible 40, compared to Morris's 25.5.

Tracy was unavailable to testify, but Rosario testified regarding the basis for the ratings he gave Morris and the

five successful candidates. In his testimony, Rosario focused on Morris's writing sample, which he testified reflected a lack of understanding regarding department complaint and discipline processes. Specifically, Rosario testified that Morris's writing sample exhibited "immediate glaring" problems: It indicated that, as a sergeant, Morris would herself investigate a citizen complaint and would speak to the officer who was the subject of the complaint, both of which are inconsistent with the complaint process. Morris's response also indicated she would herself determine whether the conduct at issue violated policy or procedure, which Rosario testified would be improper and "not her role as a department or as a sergeant." Rosario noted this in a written comment on Morris's rating sheet as well: "In a citizen complaint . . . 'she' [Morris] determined in/out policy."[1] (Capitalization omitted.) Finally, Rosario noted that Morris's response was inconsistent with departmental policy in that it indicated Morris would report her recommendation to the subject officer and would report the outcome of the investigation to the complainant. On these bases, Rosario—like Tracy—rated Morris's writing sample a "2."

In addition, both Rosario and Tracy lowered Morris's interview rating based on Morris purportedly not understanding that comment cards could be used to document positive, as well as negative feedback. The record includes conflicting evidence regarding whether Morris failed to explain this during her interview, and her writing sample does not speak to it.

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[1] Rosario was not asked and thus did not testify about why the female pronoun appears in quotes in this comment.

B. *Evidence of Pretext*

At trial, Morris did not dispute that her ratings in the second phase of the application process were lower than those attained by the successful male candidates. Rather, she argued that these ratings were not commensurate with her and the other male officers' actual qualifications and performance and, thus, that the ratings were pretextual. Morris offered several categories of evidence she argued reflected a disparity between the way Rosario and Tracy assessed Morris and the way they assessed the successful male candidates.

1. *Writing sample evidence*

First, Morris offered evidence that the successful male candidates' writing samples arguably suffer from some of the same flaws Rosario identified as the basis for Morris's low rating on her writing sample, and that the male candidates nevertheless received much higher—and, in some cases, perfect—ratings. Specifically, as discussed below, several of the successful male candidates' writing samples suggest that the officer would himself (1) conduct an investigation, and/or (2) speak with the subject officer, and/or (3) make a policy determination, all errors Rosario testified were significant flaws in Morris's writing sample.

For example, Braun indicated in his writing sample that, if he needed additional information, he would "speak with the officer in question." Braun also described himself gathering "all the info necessary" and referred to being part of an investigation. (Capitalization omitted.) Rosario and Tracy both rated Braun's writing sample a perfect "5" and noted in the comments "excellent understanding of the discipline process."

Belo's writing sample discussed in detail the steps Belo himself would take to "complete the investigation" and stated

Belo would "conduct an informal inquiry with all witnesses and involved officers." (Capitalization omitted.) The response did not expressly indicate whether that would include the subject officer of the complaint, and there was conflicting testimony at trial in this regard. Both reviewers rated Belo's writing sample a "4."

Oliver indicated in his writing sample that he would determine whether the conduct at issue reflected a "lack of adherence to a policy or procedure" and, if so, "would then document all of the information and statements with the allegations on a personnel complaint document and forward it to the internal affairs division for further investigation." (Capitalization omitted.) Oliver received two "4's" on his writing sample.

Finally, Nua's writing sample consisted of three sentences and indicated that "the officer alleged in the complaint would have to be interviewed" and "should be advised of the alleged complaint against him." (Capitalization omitted.) It did not explain who would do this, or who would conduct the investigative activities the response generally described. Nua's response received two "4's."

2. *Evidence regarding relative qualifications in community relations category*

Second, Morris offered evidence suggesting that the five successful male candidates were less qualified than Morris in the area of community relations, but that they received the same ratings Morris did in this category.

Specifically, Morris testified regarding her almost five years serving as a Port Police community resources officer and senior lead officer, positions which required her to be "the face [and] the voice of the department," including by

attending community meetings in both a representative and "problem-solving" capacity. She offered evidence reflecting several awards and accolades she had received from city and state bodies during her tenure at the department, based in whole or in part on her community outreach efforts, including: public servant of the year for the city of Wilmington in 2010; a congressional commendation; and a certificate of recognition from the California Senate for public servant of the year in 2009, among others. Morris received a "5" in this category, but so did three of the successful male candidates, none of whom had identified any special accomplishments, experience, or accolades in the area of community relations. Tracy and Rosario's written comments on the rating cards for three of these five officers suggest their perfect ratings were based on the candidates being "very well spoken," "very proactive" and giving an "excellent answer to improve relations," or "know[ing] policy well." (Capitalization omitted.)

3. *Evidence regarding relative qualifications in leadership and experience categories*

Third, Morris offered evidence suggesting she was more qualified than the successful male candidates in certain categories, and that this was not reflected in the ratings she and the other candidates received in those categories. For example, in the leadership category, Morris received lower ratings than all successful male applicants. Her application reflected that she has received accolades for her leadership efforts as a community resources officer and senior lead officer, positions she held for over four and a half years. It also reflected that she had been a field training officer (FTO) for almost five years, a position that requires leadership abilities. Presented with these

qualifications, both Tracy and Rosario gave Morris a "4" for leadership.

By contrast, Nua had never held any leadership roles inside or outside the department, yet he received a perfect "5" from both Tracy and Rosario and written comments that "[Nua] exhibit[ed] leadership in his daily assignments" and "[was a] demonstrated leader." (Capitalization omitted.) Belo had served as an FTO for approximately two years—less than half of Morris's tenure in this position—and had previously been demoted from the leadership position of sergeant after only five months.[2] Belo received a perfect "5" from Tracy and a "4" from Rosario. Braun listed no particular leadership experience in his application, yet Rosario rated Braun a perfect "5" with the comment that he "has shown excellent leadership role." (Capitalization omitted.)

The two remaining successful candidates who rated higher than Morris in this category, Oliver and Niles, *did* identify significant leadership qualifications in their applications. Tracy's rating card for Oliver notes, as a basis for the perfect "5" rating Oliver received in the "leadership" category, that Oliver had been an FTO and team leader. Tracy wrote no such comment on Morris's card, despite Morris having served in both of those roles for a longer tenure than had Oliver.

All successful male candidates also rated higher than Morris in the experience category, although they each had less experience than did Morris in law enforcement generally and/or

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[2] Belo was demoted after an incident "involving a beanbag shotgun, [in] which [Belo] launched a projectile to render a small package safe from a distance" in a manner "frowned upon by [the] department." The record is unclear as to whether this constituted a violation of policy, though Belo was not disciplined.

at the Port Police specifically. One candidate, Niles, had military experience, which Morris did not.[3]

4. *Rosario's responses to purported rating disparities*

In arguing these disparities suggest that the ratings were pretextual, Morris points to the fact that, when Rosario was confronted with these disparities at trial, he offered little by way of explanation or context. In some instances, Rosario testified that he did not view the male applicants' samples as reflecting the same mistake he noted in Morris's writing sample. For example, he testified that he did not understand Belo's plan to interview "all witnessing and involved officers" as including an interview of the subject of the complaint, something for which he had faulted Morris. Similarly, Rosario testified he did not understand the statement in Nua's writing sample that " 'the officer alleged in the complaint would have to be interviewed' " as suggesting Nua himself would interview the officer. (Capitalization omitted.)

In other instances, Rosario recognized the disparity, but offered no explanation. For example, he acknowledged that Braun's writing samples included attributes for which Rosario downgraded Morris, but not Braun, and offered no explanation for this difference in rating. And although Rosario initially disputed that Belo and Oliver's writing samples each reflected one of the "glaring" mistakes for which Rosario downgraded Morris, he ultimately conceded the point, and confirmed that

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[3] Based on written comments on Belo's rating card, it appears Belo also received positive credit for his five months' experience as sergeant, even though he had been demoted from that position.

both male officers' written statements suffered from these same mistakes, yet they received much higher ratings than did Morris—and in one instance, a perfect rating. Again, Rosario offered no explanation for these disparities.

Nor did Rosario suggest he or Tracy may have made a mistake; to the contrary, Rosario testified that he stood by his rating decisions and did not see any errors in them.

C. *Evidence Regarding Gender Bias*

Morris argued at trial that the true reason for these rating disparities was her gender. She argued this motive can be inferred from the evidence of pretext discussed above, when considered in connection with other evidence Morris offered regarding Tracy's gender bias. Tracy was not available to testify, but the following was admitted into evidence:

1. *Evidence regarding Tracy's views on women in law enforcement*

Smith testified to "[s]tatements that [Tracy] had—you know, that he would make. You know, the way that he perceived our female officers, and he said that they were weak." Although Tracy may not have said this "in those words, but that was the understanding that [Smith] got from him."[4]

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[4] The trial court sustained some, but not all, of the City's hearsay objections to Smith's testimony regarding Tracy's statements. We discuss only Smith's testimony to which the City did not object, or regarding which the City's objection was overruled. In any case, because such testimony was not offered to prove the truth of the statements attributed to Tracy, but rather to establish that Tracy made those statements, it is not hearsay. (See Evid. Code § 1200, subd. (a).)

2. *Evidence that Tracy discouraged Morris from advocating for female officers*

Morris testified that Tracy made statements directly to her "as far as me, you know, not fighting other people's fights and specifically not, you know, looking out for other officers, specifically female officers." Smith testified to "[d]irect conversations . . . with [Tracy] where [Tracy] asked me to have a conversation with . . . Morris and tell her . . . that if she became more of a team player, then she would see things come her way. But just as long as she fought all of the battles for all of the *female* officers, she wouldn't go anywhere." (Italics added.)[5]

3. *Evidence regarding Rosario*

Morris offered no evidence that Rosario harbored any bias against women. Rather, she offered evidence to support her argument that Rosario was several years Tracy's junior, and that the two discussed their evaluation of candidates prior to finalizing their ratings. Rosario testified that this discussion with Tracy did not cause him to change his rating for any of the candidates at issue, including Morris, and that each captain

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[5] At trial, the City argued Tracy took issue with Morris's efforts to stand up for other officers based not on their gender, but on the fact that Morris was not a union representative at the time, and thus should not have been representing the interests of fellow officers. There is conflicting evidence in the record on this point. Morris and Smith both testified to statements each heard Tracy make regarding Morris's efforts on behalf of female officers specifically. But Morris also acknowledged that she advocated for all officers who sought her assistance, and on cross-examination, Smith acknowledged that "a big part of" "the problem that . . . Tracy had with . . . Morris [was] that she would speak up for other officers" generally.

individually determined the ratings he would give each candidate.

IV. Jury Verdict and Motion for JNOV

The jury ultimately entered a special verdict, finding Morris's gender was a motivating factor in the City's denial of her promotion to sergeant in 2011. The trial court accordingly entered judgment for Morris, in response to which the City filed a JNOV motion, arguing that Morris had failed to provide substantial evidence to support the jury's verdict.

The trial court granted the motion and issued an amended judgment, which Morris timely appealed.

DISCUSSION

I. Standard of Review

We review an order granting JNOV based on insufficiency of the evidence under the substantial evidence standard (*McCoy v. Pacific Maritime Assn.* (2013) 216 Cal.App.4th 283, 302), considering the whole record, rather than "isolated bits of evidence," in the light most favorable to the party obtaining the verdict. (*McRae v. Department of Corrections & Rehabilitation* (2006) 142 Cal.App.4th 377, 389 (*McRae*); *Cooper v. Takeda Pharmaceuticals America, Inc.* (2015) 239 Cal.App.4th 555, 573.) Actions alleging unlawful discrimination "are inherently fact-driven, and we recognize that it is the jury, and not the appellate court [nor the trial court], that is charged with the obligation of determining the facts." (*McRae, supra*, 142 Cal.App.4th at p. 389.) Thus, we are bound to "accept any reasonable interpretation of the evidence which supports the [jury's] decision" (*Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1203–1204), and to resolve all conflicts in the evidence in favor of the jury's

verdict. (*Teitel v. First Los Angeles Bank* (1991) 231 Cal.App.3d 1593, 1603.)

II. Law Governing Employment Discrimination Claims

A plaintiff alleging employment discrimination bears the burden of offering "evidence that, taken as a whole, permits a rational inference that intentional discrimination was a substantial motivating factor in the employer's actions toward the plaintiff." (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 377 (*Horsford*).) In *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792 (*McDonnell Douglas*), the United States Supreme Court developed a burden-shifting framework as a tool to assist with the inherently difficult tasks of proving an employer's motivation and resolving "the elusive factual question of intentional discrimination." (*Texas Dept. v. Burdine* (1981) 450 U.S. 248, 255, fn. 8 (*Texas Dept.*).) California courts have adopted this framework. (See *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 355 (*Guz*).)

Under the *McDonnell Douglas* framework, a plaintiff bears the initial burden of establishing a prima facie case of employment discrimination through disparate treatment. (*McDonnell Douglas, supra,* 411 U.S. at p. 802.) How a plaintiff may do so is "flexible" (*Clark v. Claremont University Center* (1992) 6 Cal.App.4th 639, 663; see *McDonnell Douglas, supra*, 411 U.S. at p. 802, fn. 13), though it is clear the plaintiff must show the employer has taken actions, " 'from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were' " based on discrimination. (*Ibarbia v. Regents of University of California* (1987) 191 Cal.App.3d 1318, 1327–1328, quoting *Furnco Construction Corp. v. Waters* (1978)

438 U.S. 567, 576.) Often, a plaintiff satisfies this initial burden by showing "(1) he was a member of a protected class, (2) he was qualified for the position he sought . . . , (3) he suffered an adverse employment action, such as . . . denial of an available job, and (4) some other circumstance suggest[ing] discriminatory motive." (*Guz, supra*, 24 Cal.4th at p. 355.) A prima facie showing by the plaintiff shifts the burden to the defendant employer to "articulate some legitimate, nondiscriminatory reason" for the adverse employment action. (*McDonnell Douglas, supra*, 411 U.S. at pp. 802-803; *Guz, supra*, 24 Cal.4th at p. 358.)

If the employer can articulate such a reason, the burden shifts back to the plaintiff to show "that the reason offered by the employer was a pretext for unlawful discrimination." (*McDonnell Douglas, supra*, 411 U.S. at p. 804; *Hersant v. Department of Social Services* (1997) 57 Cal.App.4th 997, 1004–1005 (*Hersant*).) The employee cannot do this by " 'simply show[ing] that the employer's decision was wrong or mistaken,' " however, " 'since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent.' " (*Id.* at p. 1005.) Rather, the employee must show that the proffered explanation is "unworthy of credence" (*ibid.*), and was a "mere makeweight[]." (*Horsford, supra*, 132 Cal.App.4th at p. 378.)

The *McDonnell Douglas* framework does not lessen plaintiff's ultimate burden of establishing intentional discrimination. (*Frank v. County of Los Angeles* (2007) 149 Cal.App.4th 805, 824.) Therefore, on appeal, we do not review evidence of the individual burden-shifting steps, but rather consider whether the totality of what was presented at trial constitutes substantial evidence of the ultimate issue: Does the evidence, "taken as whole, permit[] a rational inference that intentional discrimination was a substantial motivating factor in

the employer's actions toward the plaintiff[?]" (*Horsford, supra,* 132 Cal.App.4th at p. 377; *id.* at p. 375 ["[o]nce the case is submitted to the jury . . . these frameworks drop from the picture and traditional substantial evidence review takes their place"].)

A plaintiff may establish this ultimate fact "either directly by persuading the [trier of fact] that a discriminatory reason more likely motivated the employer *or indirectly by showing that the employer's proffered explanation is unworthy of credence*." (*Texas Dept., supra*, 450 U.S. at p. 256, italics added.) In this respect, the burden of establishing pretext can "merge[] with the ultimate burden of persuading the [trier of fact] that [the plaintiff] has been the victim of intentional discrimination." (*Ibid.*) A plaintiff may rely on various forms of circumstantial evidence to establish discrimination, including "[1] evidence that the employer's stated nondiscriminatory reason for the adverse action was untrue or pretextual, or [2] evidence the employer acted with a discriminatory animus, *or* [3] *a combination of the two*." (*Hersant, supra*, 57 Cal.App.4th at pp. 1004–1005, italics added.) Thus, "a plaintiff's prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated." (*Reeves v. Sanderson Plumbing Products, Inc.* (2000) 530 U.S. 133, 148; accord, *St. Mary's Honor Center v. Hicks* (1993) 509 U.S. 502, 511 ["The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination."].)

Under which circumstances such evidence is adequate to sustain a jury's finding in a particular case "will depend on a number of factors" including "the strength of the plaintiff's prima facie case, the probative value of the proof that the employer's

explanation is false, and any other evidence that supports the employer's case." (*Reeves v. Sanderson Plumbing Products, Inc., supra*, 530 U.S. at pp. 148–149.)

III. Under the Deferential Standard of Review We Must Apply, the Record Contains Substantial Evidence to Support the Jury's Verdict

Morris argues that she presented sufficient evidence of pretext and made a prima facie showing suggesting gender bias that, taken together under the legal framework discussed above, support the jury's finding of intentional discrimination. Given the deference we must show the jury's verdict under the applicable standard of review, we agree. The record—when considered as a whole, viewed in the light most favorable to the verdict, and disregarding contrary conclusions a different reasonable jury may have drawn—provides substantial evidence to support the jury's verdict.

Morris presented evidence that, "if credited by the jury, . . . established a disparity between [the City's] asserted reasons and the underlying facts" suggesting that "the asserted reasons were mere makeweights." (*Horsford, supra*, 132 Cal.App.4th at pp. 378-379.) Specifically, Morris highlighted—and Rosario acknowledged—several instances in which the male candidates were graded less harshly than was Morris for making the same or similar mistakes. Rosario's inability to credibly explain the apparently disparate approaches he took to rating Morris and her male competitors for the promotion is also telling. (See *Texas Dept., supra*, 450 U.S. at p. 255, fn. 10 ["there may be some cases where the plaintiff's initial evidence, combined with effective cross-examination of the defendant [on the nondiscriminatory explanation offered] will suffice to discredit the defendant's explanation"]; *Guz, supra*, 24 Cal.4th at p. 363 [questioning veracity of employer's stated non-discriminatory reasons "where

the employer has given shifting, contradictory, implausible, uninformed, or factually baseless justifications for its actions"].) Evidence of unexplained disparity in the way that both Port Police captains rated Morris and the male candidates warranted an inference of pretext.[6]

The City argues that the evidence of pretext does not establish Morris was better qualified overall than were the male applicants, or that, absent the alleged discrimination, she would have been promoted to sergeant. But this evidence was not offered to—and need not—establish that Morris was better qualified. Rather, such evidence is relevant to whether "the impressions the interviewer[s] reported could not be taken at face value." (*Reeves v. MV Transportation, Inc., supra,* 186 Cal.App.4th at p. 680; see *Texas Dept., supra*, 450 U.S. at pp. 258-259 [evidence of relative qualifications is probative of the veracity of the reason offered].) If not, the jury was entitled to draw an inference, based on that lack of credible explanation and the other evidence in the record, that the City acted for discriminatory reasons. (See, e.g., *id.* at p. 255, fn. 10.)

Morris also offered evidence suggesting that one of the decision makers in the promotion process had a bias against women in law enforcement. We recognize that the patchwork of testimony regarding Tracy's views of women in law enforcement, standing alone, is insufficient to prove Tracy's

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6 Evidence of disparity in candidates' qualifications must be "substantial" to *alone* support an inference of discrimination. (*Reeves v. MV Transportation, Inc.* (2010) 186 Cal.App.4th 666, 674–675.) We need not consider whether this is the case here, as Morris did not rely on evidence of pretext alone to establish discriminatory intent.

views or that he acted with discriminatory intent in 2011. But evidence regarding discriminatory statements or pretext that may not be sufficient to warrant an inference of discrimination *when considered individually* may, when considered together, "create an 'ensemble [that] *is* sufficient' " to permit an inference of intentional discrimination and satisfy a plaintiff's ultimate burden of persuasion. (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 542 (*Reid*).)

The City argues that nothing connects any of the evidence regarding Tracy's statements or views with the 2011 sergeant promotion decision, and that no evidence suggests Rosario made any such statements. But courts "should not categorically discount" comments because they are "not made in the direct context of the decisional process," or because they are not attributed to all decision makers, and should instead allow "the fact finder to assess [their] probative value." (*Reid, supra,* 50 Cal.4th at p. 540; see *Reeves v. Sanderson Plumbing Products, Inc., supra*, 530 U.S. at pp. 152-153 [concluding trial court impermissibly discounted "potentially damning" age-related comments on these bases].) We cannot "unwind the various strands of [Morris's] evidence, discounting each strand, in an attempt to show that 'the jury could only speculate that [gender] may have played a part in these decisions.' " (*Horsford, supra*, 132 Cal.App.4th at p. 377, underlining omitted.) Rather, we are "constrained by the standard of review to examine the whole record, including reasonable inferences the jury may have made." (*Ibid.*) The record as a whole provides a basis, from which the jury could reasonably infer that the City's disparate treatment of Morris and the male candidates was based on her gender. (See *ibid.* ["Circumstantial evidence of motivation does not unravel into 'speculation' when the evidence permits inferences that are 'the product of logic and reason.' "].)

For these reasons, we conclude that, under the deferential standard of review we must apply, substantial evidence supports the jury's finding of discrimination and corresponding verdict in Morris's favor.

DISPOSITION

The order granting the City's motion for judgment notwithstanding the verdict and the resulting amended judgment are reversed. The City's cross-appeal is dismissed. The appellant is awarded her costs.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

WEINGART, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.